

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
OFFICE OF SECURITIES**

INTERIM ORDER EXEMPTING CERTAIN)	
VENTURE CAPITAL AND OTHER PRIVATE)	
FUND ADVISERS FROM INVESTMENT)	Order 12-01-EXE
ADVISER LICENSING REQUIREMENTS)	

Whereas, the Administrator of the Maine Office of Securities (the “Administrator”) is charged with the administration of the Maine Uniform Securities Act, 32 M.R.S. §§ 16101-16702, (hereinafter, “the Act”); and

Whereas, the Act provides that “[i]t is unlawful for a person to transact business in this State as an investment adviser unless the person is licensed under this chapter as an investment adviser or is exempt from licensing as an investment adviser...,” 32 M.R.S. § 16403(1); and

Whereas, advisers to venture capital and other private funds are subject to the licensure requirements of the Act; and

Whereas, the Administrator has, on a case-by-case basis and in limited circumstances, granted exemptions from licensure to certain venture capital and other private funds; and

Whereas, certain funds that have been granted exemptions in the past have requested that the Office of Securities issue an order extending the existing exemption; and

Whereas, the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, “Dodd-Frank”), which went into effect on July 22, 2011, enacted certain exemptions from federal registration for advisers to venture capital and other private funds and directed the United States Securities and Exchange Commission to adopt rules regarding registration and reporting of these advisers, which rules have since been adopted by the SEC; and

Whereas, the current economic climate in the state has created challenges for small businesses and limited small business capital formation; and

Whereas, the Act and rules adopted pursuant thereto and the federal securities laws and rules recognize that for certain purposes institutional investors, accredited investors, and qualified clients, as that term is defined in SEC Rule 205-3, 17 C.F.R. § 275.205-3, require a lesser degree of protection by regulators than do other investors; and

Whereas, there are costs involved in complying with Maine's investment adviser licensing requirement, and it is unclear whether the benefits that stem from applying those requirements to certain venture capital and other private fund advisers justify those costs; and

Whereas, the Administrator cooperated with the North American Securities Administrators Association in the development of uniform protocols and a model rule for the regulation of certain venture capital and other private fund advisers under state securities laws; and

Whereas, 32 M.R.S. §§16403(2)(C) and 16404(2)(B) provide that the Securities Administrator may by order exempt persons from the investment adviser and investment adviser representative licensing requirements; and

Whereas, the Administrator intends to initiate rulemaking and propose for adoption and publish for comment and hearing the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule adopted by NASAA membership on December 16, 2011.

Now, therefore, the Administrator:

1. Finds, for the reasons stated above, that granting an interim exemption from the investment adviser and investment adviser representative licensing requirements for certain venture capital and other private fund advisers is in the public interest and consistent with the Maine Uniform Securities Act;
2. ORDERS that an investment adviser that provides advice solely to one or more qualified private funds (as defined in SEC Rule 203(m)-1, 17 C.F.R. § 275.203(m)-1) is exempt from the investment adviser licensing requirements set forth in 32 M.R.S. §16403(1), provided that the following conditions are met:
 - a) the investment adviser maintains a place of business in the State of Maine;
 - b) the investment adviser does not hold itself out generally to the public as an investment adviser;
 - c) neither the investment adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262; and
 - d) the investment adviser files with the State of Maine Office of Securities each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4.

3. ORDERS that an investment adviser who advises at least one qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-(c)(1) (other than a venture capital fund as defined in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1), shall, in order to qualify for this exemption and in addition to satisfying the conditions specified in paragraph 2, comply with the following requirements:

- a) The investment adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;
- b) At the time of purchase, the investment adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
 - (1) all services, if any, to be provided to individual beneficial owners;
 - (2) all duties, if any, the investment adviser owes to the beneficial owners;
 - and
 - (3) any other material information affecting the rights or responsibilities of the beneficial owners.
- c) The investment adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

4. ORDERS that a person who is employed by or associated with an investment adviser that is exempt from licensure pursuant to this interim order is also exempt from the investment adviser and investment adviser representative licensing requirements set forth in 32 M.R.S §§16403(1) and 16404(1), provided the employed or associated person does not otherwise act as an investment adviser representative.

5. This Order extends to state investment adviser and investment adviser representative licensure requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

6. This Order neither imposes nor relieves any legal or regulatory obligations on federal covered investment advisers or their representatives, including notice filing requirements.

7. This Order shall remain in effect unless and until subsequently amended or rescinded.

Date: February 16, 2012



Judith M. Shaw
Securities Administrator